

May 25, 2015

John Gleeson USDJ
Office Address:
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201
USA

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US DISTRICT COURT E.D.N.Y.

★ JUN 05 2015 ★

BROOKLYN OFFICE

For the attention of Judge John Gleeson

Dear Judge Gleeson,

My name is Colvin Brown, a citizen of New Zealand but with permanent residence in Hong Kong.

I am writing to you in your position as a United States Federal Judge and in particular your responsibilities relating to the Deferred Prosecution Agreement ("DPA") with HSBC BANK USA, N.A. and HSBC HOLDINGS PLC ("HSBC").

I am aware that while the government asks the Court to keep this criminal case on its docket, the Court retains the authority to ensure that the implementation of the DPA remains within the bounds of lawfulness and respects the integrity of the Court and that significant developments are to be brought to the attention of the Court.

I believe that your responsibilities are limited to the DPA. But I am so concerned with the conduct of HSBC in other worldwide jurisdictions and I wish to inform you of the circumstances of my situation with HSBC in Hong Kong so that in your dealings with HSBC you are fully aware of its lack of honor and integrity and the simple fact that it does not operate to a standard expected by Societies.

While I am particularly concerned with the banking industry as a whole worldwide and its overpowering influence on the worldwide economy I am very concerned with the activities of HSBC in particular.

To provide background I am a long term resident of Hong Kong. I am a retired Fellow Member of the Hong Kong Institute of Certified Public Accountants. I am now 70 years old. I was the founder managing partner of two of the current top twelve firms of Certified Public Accountants in Hong Kong. I spent many years working on saving distressed companies in Hong Kong; and I have created or saved many thousands of jobs in Hong Kong and China. During my working career, often at the request of The Hong Kong and Shanghai Banking Corporation Limited in its earlier life ("HSBC, Hong Kong") I advised and/or worked on a number of HSBC's troubled accounts at the request of HSBC and saved HSBC from losses of many tens of millions of Hong Kong dollars.

At least two charitable organizations in Hong Kong, SPCA (The Society for Prevention of Cruelty to Animals) and Outward Bound are in some part financially secure now because of fund raising systems I introduced to them when I acted as Hon. Treasurer for both in the 1980's.

I received an International Award for my involvement in Hong Kong on a Worldwide Campaign with Rotary International to rid the world of Polio.

I was appointed a Justice of the Peace in Hong Kong in 1998.

In my business career, I visited the United States many times, particularly New York, where I have a considerable number of friends and associates and still remain interested in US politics and developments.

I seem to have now run afoul of HSBC Hong Kong as, without me knowing about it, HSBC filed a number of court documents; arranged Court Hearings without me knowing; and had both myself and my wife a qualified doctor (a well respected anaesthetist specialized in neuro-surgery) declared bankrupt and we did not know about this and accordingly were not able to defend ourselves from HSBC's outrageous conduct.

Furthermore, even after taking these actions HSBC made no attempt to inform us of what they had done.

In my case I only found out about it sometime later when I was handed a free throwaway tabloid in a backstreet of Hong Kong in which I was listed as having been declared bankrupt, but this tabloid made no reference of who the petitioner was. In the case of my wife we found out about these actions some months later when my wife was contacted by a bank from another country. You can imagine the impact on her career as an Anaesthetist.

I could not believe that these actions could take place in Hong Kong. I only hope this would not be possible in the United States.

In my opinion, it is totally unacceptable and I am determined that HSBC is held accountable.

In its simplest form HSBC's conduct has been unbelievable. But when we look deeper into HSBC's handling of my case we find that HSBC has been involved in;

- False statements (in writing) to the High Court of Hong Kong,
- False statements (in writing) to myself and my wife,
- Theft
- Deception
- Profiteering, by devising systems to benefit from programs developed by the Hong Kong Government to assist small and medium sized businesses in Hong Kong; such benefit at the expense of those small and medium sized businesses.

- Bundling. (Where HSBC will support a customer with a new facility but makes the new facility conditional that the customer needs to take out an further facility, favorable to the bank but not the customer)
- Conflicts of interest.
- Breach of its Statutory Responsibilities

I have taken the following actions.

- I have written a number of complaint letters to the Chief Executive Officer of HSBC, Hong Kong, Mr. Peter Wong and the response was minimal.
- I have written to Mr. Douglas Flint, Chairman of HSBC Holdings plc and Mr. Stuart Gulliver as Chief Executive Officer of HSBC Holdings plc and Chairman of HSBC, Hong Kong. The response was minimal.
- I filed a Formal Official Complaint with The Hong Kong Monetary Authority against the activities of HSBC in Hong Kong on July 4, 2014 which at this stage continues to be unresolved.
- At the suggestion of The Hong Kong Monetary Authority I filed an Official Complaint with The Commercial Crimes Bureau of the Hong Kong Police and this remains pending.
- I have filed an Official Complaint to the Law Society of Hong Kong against the law firm advising HSBC, Mayer-Brown ("MB").

Our situation with HSBC was very simple and can be expressed as follows;

- We had invested some US\$12.5 million into a group of companies which we owned 100%.
- A subsidiary in this group had a total bank facility with HSBC of around US\$1.28 million supported by considerable tangible security and corporate and personal guarantees. And even Hong Kong Government guarantees for approximately 25% of the amount due.
- We were temporally behind in loan repayments by 2 months for reasons that were fully understood and manageable.
- At the request of HSBC we arranged additional equity capital and informed HSBC. On receipt of that news HSBC froze our bank accounts, corporate and personal, took all the cash on hand including the new cash introduced and consequently systematically went about and destroyed our business because without operating bank accounts we could not function.

- And in taking all our available cash as it did, HSBC knowingly and deliberately cleaned out my wife's household account of the US\$2,000 that she had to purchase food for our then 7 year old son; and knowingly cleaned out all our other bank accounts so that I had no money to pay for an emergency operation on my son's arm (amounting to US\$8,000) just broken in Tai Kwan Do training. Culture and values? No!
- In doing this, HSBC drove away our new investors.
- And in destroying our business HSBC caused losses of our investment of US\$12.5 million and losses to other creditors in the amount of US\$4.6 million.
- And HSBC caused the loss of approximately 60 jobs in Hong Kong and the resultant distress to the families of the staff who lost their jobs.
- And the resultant financial and social damage and destruction to myself, my family and my now ex-staff has been immense.

I am extremely concerned that the current propaganda put out by HSBC as having culture and values, Global Standards Programs and Conduct and Values Committees will be accepted by the public and Authorities when I know from my own personal experience that this is an organization that has no culture, no values and no honorable standards whatsoever.

Hong Kong have had a very close long term working relationship with MB the largest law firm in Hong Kong and part of Big Law worldwide. The legal profession in Hong Kong does not have a reputation of being near to the standards of major financial centers and because of this, and the close relationship with MB, HSBC are able to get away with conduct in Hong Kong that it would not be able to get away with in other major centers.

Hong Kong is a classic example of where “crony capitalism” operates. Where big business and big government get together to stack the deck against the small. And big business works very closely with the legal profession in Hong Kong to enable this to be done.

So HSBC can make statements after behaving as they did on my account that all its actions were in “accordance with all the relevant legal and procedural regulations under Hong Kong laws” because it believes it can get away with it and had MB alongside to help ensure that it does get away with it.

And HSBC can make a statement like “it made a commercial decision to liquidate my group and bankrupt myself and my wife in Hong Kong” when all the evidence indicates a huge cover up of illegal activities, because it knows The Hong Kong Monetary Authority will not interfere with “commercial decisions”.

It is very hard to contest this conduct as HSBC have taken all our wealth and cash which prevents us from responding in court; and so I have taken the position of requesting the banking Authorities to act on my behalf against HSBC.

In Hong Kong, there are no laws existing which offer protection or support for companies /corporations that have short term cash flow problems. There is nothing like Chapter 11 in the US.

If a corporation for any reason (understandable or not, temporary or not) falls behind in its loan repayment obligations with HSBC, this organization's actions are;

- Call the loan
- Freeze all operating bank accounts of the corporation and the guarantors
- Empty out these operating bank accounts
- Put the corporation into bankruptcy
- Bankrupt the personal guarantors

In Hong Kong you cannot obtain a corporate loan without the directors being required to sign personal guarantees for the amount of the corporate loan. Therefore, the limit to liability available to a corporation is not available. To back that up, there is the incredible law in Hong Kong that if a corporation or an individual cannot make a payment in Hong Kong a creditor may prepare and file what is known as a Statutory Declaration which states that the debtor has 21 days to make payment or the creditor will file a winding up petition against the corporation and/or a bankruptcy petition against the individual, as the case may be.

Bad as this law is, it is an integral part of the law that these Statutory Declarations and Bankruptcy Petitions must be properly served on the creditor. That is, the creditor must know what is going on. But invariably they are not properly served and what happened to both myself and my wife is would appear to be common place with the (allowed by law) exceptions to personal service (which are themselves an abuse) being completely abused by both the legal profession and HSBC. And they get away with it.

This law is abused by both the Hong Kong legal profession and by banks and by HSBC in particular. It has become a standard feature of credit control. The approach by HSBC is to state "we have cancelled the facilities now pay up in full or we will bankrupt you. We will not sit down with you and we will not work out a corporate recovery plan".

So faced with this type of conduct by big business in Hong Kong led all the way by HSBC and its legal representatives the only call to action that Hong Kong people have is to arrange People's Protests in the main streets of Hong Kong to try and force a change. But that has its own problems.

So with all this I watched the Annual General Meeting (AGM) of HSBC by live streaming on Friday April 24, 2015 and found it extremely disconcerting;

- HSBC was telling everyone that they have established values and culture that are global. That they have a Global Standards Committee to ensure that its conduct and actions are consistent to the needs of Societies around the world. I nearly choked on my coffee.

- It became clear that this AGM was more an exercise in public relations and was not an occasion where the Board of Directors saw this meeting as an opportunity to genuinely apologize for the illegal activities carried out by HSBC over the past number of years and which were very much at that time in the public eye. Nor was it an occasion of HSBC taking the opportunity of explaining how it was intending to put matters right.
- It became clear that when HSBC used the occasion to raise the possibility of moving the location of its domicile from the UK and its timing was a deliberate ploy to divert attention away from its past and probably current illegal activities while at the same time interfere with the political landscape in the UK.
- This later point had an uncomfortable look to it given the criticism that HSBC has been subjected to in UK by various committees and Authorities in recent times.
- It also became clear that the non-filming of the shareholders as they were raising their questions to the Chair was a deliberate attempt by HSBC to lessen the legal impact of the matters the shareholders were attempting to raise.
- It became clear that matters extremely worrying to the shareholders; that of concerns over the composition of the board and remuneration of key personnel were being ignored.
- It is obvious the AGM that HSBC did not operate with global standards and values and to publically claim in that forum that it does is a clear breach of those standards and values.
- It became particularly disturbing when it became obvious that The Hong Kong Monetary Authority, given all the circumstances, made a clearly coordinated announcement that Hong Kong would consider a proposal for HSBC to move its domicile to Hong Kong as a “positive development”.

How can it be a positive development given the size of HSBC, its extremely poor reputation and the resultant related risk of such a move to the Hong Kong economy?

Mr. Gulliver publically claimed recently that 70% of HSBC's worldwide earnings come from HSBC Hong Kong. That means by elimination that 30% of HSBC's earnings come from countries around the world other than Hong Kong.

It is well known that HSBC is under investigation in many of the countries from which that 30% of earnings is generated for numerous offenses and faces “unquantifiable” litigation costs and fines including the recent revelation that HSBC has been involved in assisting tax evasion and tax avoidance around the world.

There have been a number of parliamentary committee hearings in the UK on the conduct of HSBC.

But there are no apparent investigations or fines arising from the activities that generated the 70% of earnings which come from Hong Kong. How is that possible? How closely is HSBC monitored by The Hong Kong Monetary Authority?

It is unbelievable that a bank which is surrounded by scandals for manipulating markets, laundering criminals money, abusing and destroying its customers and helping people evade tax is publically announcing at this particular time that it is considering moving its domicile because it is being asked to contribute financially to and is being criticized by its current host country for its conduct of many years.

And it is equally unbelievable that this announcement is made while HSBC is operating under a US Deferred Prosecution Agreement until December 2017 which is clearly an existential threat to HSBC. If HSBC breaches the agreement its very survival would be at risk.

It became clear that all the references made at the AGM to conduct and values and how important these were to the way HSBC wanted to do business had little stature in fact, when it clearly was not honoring those very principles at its own AGM.

This whole exercise once again made HSBC look like an organization lacking in core values.

All this when HSBC repeatedly showed no values as to conduct and integrity and expectations of Society on its dealings on my account.

Banking Authorities around the world have established principles of business that banks must adhere to. The Financial Conduct Authority of UK has established the 11 Principles of Business (PRIN) which banks must adhere to.

HSBC and (MB) failed in 9 of the 11 PRIN in the handling of our account. In particular, HSBC's failed to honor the following Principles with respect to its performance on our account;

- A firm must conduct itself with integrity
- A firm must conduct itself with due care and diligence
- A firm must pay due regard to the interests of its customers and treat them fairly
- A firm must pay due regard to the information needs of its client's and communicate information to them in a way which is clear, fair and not misleading.
- A firm must manage conflicts of interest fairly ... between itself and its customers...
- A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.

The problem is that with HSBC, or in fact any bank under the current financial system, there must be integrity beyond reproach. The behavior of HSBC Hong Kong reinforces the notion that the mentality is more inclined to be cover-up rather than rigorous self-policing. In our case there has been the failure of the HSBC Hong Kong to manage our account fairly, openly and honestly, yet all we get is cover-up as HSBC desperately tries to protect itself.

A worldwide banking organization like HSBC either adopts culture and values or it does not. It cannot claim to adhere to culture and values of a certain standard in the US and UK; and then claim to adopt those same standards in Hong Kong but then not do so in practice. This is a major failing for HSBC, Hong Kong.

But it is also a major failing of Banking Authorities including The Hong Kong Monetary Authority in allowing it to exist.

And finally I would like to raise with you the Bankruptcy Ordinance in Hong Kong because with HSBC adopting this as an extension of its credit controls clearly makes a mockery of its claims that it operates under global standards and values.

This Bankruptcy Ordinance in Hong Kong is draconian, archaic, very pro-creditor and very inappropriate in the modern world, particularly in the circumstances of my case; particularly given the abusive conduct of HSBC. It is both unfortunate and unbelievable that these laws exist in today's Hong Kong.

It is very difficult for the people of Hong Kong, given the current political structure, to have these abusive laws repealed. It is equally incumbent on HSBC, an organization that has been to the forefront of Hong Kong business for over 100 years and was once considered a pillar of society, in knowing the draconian and archaic nature of this Ordinance, to treat it with extreme care and use it only with great reluctance, as a last resort.

In particular, given the callousness of this whole Ordinance it should only be used in the very deserving cases, not as an extension of its credit control as it is currently by HSBC and MB.

And yet as I mentioned above HSBC is telling everyone that will listen that it has established values and culture that are global. That it has a Global Standards Committee to ensure that its conduct and actions are consistent with the needs of Societies around the world.

In my opinion HSBC is an organization that needs a major overhaul of its operating standards and personnel and I would caution anyone in the United States in believing what they are told by this organization or its representatives without very rigorous independent reviews.

I apologize for all of the above. But I am very disturbed at the current situation around the world financial system at how big banks, particularly HSBC, have so much control over economies but continue to run rampant with greed and incompetence without caring about the impact and damage it does.

And, consequently, I do not want to see HSBC move its domicile to Hong Kong.

Best regards

colvin

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